

2011 DRAFTING REQUEST

Bill

Received: **11/10/2010**

Received By: **emueller**

Wanted: **As time permits**

Companion to LRB:

For: **Administration-Budget**

By/Representing: **Byrnes**

May Contact:

Drafter: **emueller**

Subject: **Transportation - driver licenses**

Addl. Drafters: **agary**

Extra Copies: **ARG**

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

Pre Topic:

DOA:.....Byrnes, BB0124 -

Topic:

Implement federal CDL regulations related to medical certification

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	emueller 11/30/2010 agary 11/30/2010	csicilia 12/01/2010		_____			
/1			rschluet 12/02/2010	_____	sbasford 12/02/2010		
/2	emueller	csicilia	phenry	_____	sbasford		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/03/2011	01/04/2011	01/04/2011	_____	01/04/2011		

FE Sent For:

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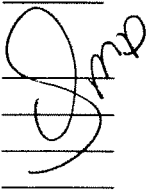
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1/2 sum 1/3/11 1/2 js 1/4
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Implement federal CDL regulations related to medical certification and texting while driving.

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1? /1	emueller svm 11/30/10	145 12/1 10					

FE Sent For:

<END>

Mueller, Eric

From: Hanaman, Cathlene
Sent: Monday, November 22, 2010 11:14 AM
To: Gary, Aaron; Mueller, Eric
Subject: FW: Statutory Language Drafting Request

From: DOADLBASADMININTERNETSHAREPOINT@WI.GOV
[mailto:DOADLBASADMININTERNETSHAREPOINT@WI.GOV]
Sent: Monday, November 22, 2010 11:05 AM
To: Hanaman, Cathlene
Cc: Shayna.Hetzel@wisconsin.gov; Thornton, Scott - DOA; Grinde, Kirsten - DOA
Subject: Statutory Language Drafting Request

Topic: New CDL Requirements

Tracking Code: BB0124

SBO Team: TTO

SBO Analyst: Byrnes, Tyler - DOA
Phone: (608) 266-1039
E-mail: Tyler.Byrnes@Wisconsin.gov

Agency Acronym: WisDOT

Agency Number: 395

Priority: Medium

Intent:

DESCRIPTION OF CHANGE:

To implement new rules created by the Federal Motor Carrier Safety Administration (FMCSA), the Department requires two statutory changes:

Add a subsection to s. 343.065(3) Wis. Stats., that allows the Department to downgrade a commercial driver license if the driver does not have a current federal medical certification on file with the Division of Motor Vehicles (DMV). Specify that DMV may promulgate a rule to define downgrade in accordance with FMCSA guidance. The rule will also address the process of downgrading a license, whether or not a new product will be issued or if the license will be downgraded on DMV's record only, and how the commercial driver license will be reinstated when the Department receives a valid medical certification.

Add a subsection to s. 346.89 Wis. Stats., to include prohibit texting while driving for commercial drivers engaged in interstate commerce. The restriction should only be placed on driving, not operating, and must include all texting activities as listed in FMCSA's final rule (75 FR No. 186, pgs. 59118-59136 (September 27, 2010)). There are approved devices to be used

11/30/2010

for other functions of fleet management system that will still be allowed, and farming, beekeeping, and farm vehicles are also permitted exceptions. Include monetary penalties as cited in the rule (up to \$2,750 for drivers and up to \$11,000 for employers), and require disqualification for violations and upon receiving notice of conviction from another jurisdiction.

Attachments: False

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0429/1dn
EVM&ARG:/:.....

gjs

- late -

ATTN: Tyler Byrnes

Please note, the exceptions referenced in section 10 of the federal register for farm custom operation, apiarian industries, and certain farm vehicle drivers are actually non-exceptions. These groups would have been excepted from the texting while driving regulation by existing general exceptions, but have been specifically non-excepted from this regulation. I have not, therefore, provided any treatment of these groups in this draft. Please let me know if you believe any changes are necessary.

Eric V. Mueller
Legislative Attorney
Phone: (608) 261-7032
E-mail: eric.mueller@legis.wisconsin.gov

✓
✓
✓
X ✓
I drafted created s. 343.065 (3). I had some difficulty deciphering the intent of the drafting instructions and reconciling the instructions with ss. 343.065, 343.14 (2) (i), 343.17 (3) (e) 1., and 343.21 (1) (g), stats., Trans 112, Wis. Adm. Code, and 49 C.F.R. part 391, subpart E. Please advise if the attached draft is not consistent with ~~our~~ intent.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

your

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0429/linsAG
ARG:.....

1

2


INSERT ANAL-A:

Under current law, DOT issues commercial driver licenses (CDLs) authorizing the licensee to operate certain commercial motor vehicles (CMVs). CMVs are motor vehicles that are designed or used to transport property or passengers and that weigh more than 26,000 pounds, transport 15 or more passengers plus the driver, or transport hazardous materials.

INSERT ANAL-B:

Under current law, an application to DOT for a CDL authorizing interstate operation of CMVs must include a certification by the applicant that he or she meets certain driver qualification requirements under federal law or federally-approved requirements established by DOT rule, including physical qualifications. If the application is for a CDL authorizing only intrastate operation of CMVs, the application to DOT must include a certification by the applicant that he or she meets driver qualification requirements for drivers in intrastate commerce established by DOT rule, including physical qualifications. If an applicant for a CDL does not meet the physical qualification requirements for CMV drivers operating in interstate commerce but is otherwise qualified to operate a CMV, DOT may issue to the applicant a CDL restricted to authorizing the operation of CMVs that are not in interstate commerce.

Under this bill, if a person issued a CDL authorizing operation of CMVs in interstate commerce does not have on file with DOT a current certification covering the person's physical qualifications to operate CMVs in interstate commerce, DOT may downgrade the CDL to a restricted CDL and impose a "K" restriction on the CDL restricting the licensee from operating CMVs in interstate commerce. DOT must promulgate rules to define "downgrade" in accordance with federal law and regulations or guidance from the applicable federal agency and to establish the process for downgrading a CDL and reinstating a CDL after it has been downgraded.



3



State of Wisconsin
2011 - 2012 LEGISLATURE

in
11/30



0429/1

LRB-0254/P1

EVM:cjs:md

EVM:ARG:cjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV

generate budget header

RMNR

D-Note

TRANSPORTATION
DRIVERS AND MOTOR VEHICLES

Do NOT Gen

- 1 AN ACT *to amend* 346.02 (10) and 346.02 (11); and *to create* 343.245 (3) (d),
- 2 343.245 (4) (d), 343.315 (2) (f) 9., 346.89 (4) and 346.95 (12) of the statutes;
- 3 **relating to:** prohibiting texting while driving a commercial motor vehicle and
- 4 providing a penalty *the budget*

Analysis by the Legislative Reference Bureau

Also Under current law, generally, no person may drive a motor vehicle while composing or sending an electronic text message. Persons who violate this prohibition may be required to forfeit not less than \$20 nor more than \$400.

Also under current law A person licensed to drive a ~~commercial motor vehicle~~ CMV may be disqualified from operating a CMV upon being convicted of certain major traffic-related offenses or violations of other requirements related to operating a CMV. Among the offenses that may result in disqualification are several major traffic-related offenses that are classified as "serious traffic offenses." A person who is convicted of committing two serious traffic offenses within a three-year period is disqualified from operating a CMV for 60 days and a person who is convicted of committing three serious traffic offenses within a three-year period is disqualified from operating a CMV for 120 days.

This bill specifically prohibits texting while driving a CMV. "Texting" is defined as "manually entering alphanumeric text into or reading text from an electronic device." The definition, however, specifically excludes 1) selecting or entering a telephone number, extension number, or voice mail retrieval code for the purpose of initiating or receiving a phone call or retrieving a voice mail or 2) reading information

or inputting information into a global positioning system or navigation system device. "Driving" is defined as "the exercise of physical control over a [CMV] while the vehicle's motor is running, except when the vehicle is stopped to the side of or off a highway in a location where the vehicle can safely remain stationary." Any person who violates this prohibition may be required to forfeit not more than \$2,750. In addition, a violation of this prohibition is classified as a "serious traffic offense" for purposes of potential disqualification from operating a CMV.

Also under this bill, no employer that is a motor carrier may permit an employee to drive a commercial motor vehicle while texting. Any employer who violates this prohibition may be required to forfeit not more than \$11,000.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 343.245 (3) (d) of the statutes is created to read:

343.245 (3) (d) No employer that is a motor carrier may allow or require an employee to violate s. 346.89 (4).

SECTION 2. 343.245 (4) (d) of the statutes is created to read:

343.245 (4) (d) Any person who violates sub. (3) (d) shall forfeit not more than \$11,000.

SECTION 3. 343.315 (2) (f) 9. of the statutes is created to read:

343.315 (2) (f) 9. Violating s. 346.89 (4) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.89 (4) or the law of another jurisdiction prohibiting driving a commercial motor vehicle while texting, as those or substantially similar terms are used in that jurisdiction's law.

SECTION 4. 346.02 (10) of the statutes is amended to read:

346.02 (10) APPLICABILITY TO SNOWMOBILES. The operator of a snowmobile upon a roadway shall in addition to the provisions of ch. 350 be subject to ss. 346.04, 346.06, 346.11, 346.14 (1), 346.18, 346.19, 346.20, 346.21, 346.215 (3), 346.26, 346.27, 346.33, 346.35, 346.37, 346.39, 346.40, 346.44, 346.46, 346.47, 346.48, 346.50

1 (1) (b), 346.51, 346.52, 346.53, 346.54, 346.55, 346.87, 346.88, 346.89 (1) to (3),
2 346.90, 346.91, 346.92 (1) and 346.94 (1) and (9).

3 **SECTION 5.** 346.02 (11) of the statutes is amended to read:

4 346.02 **(11)** APPLICABILITY TO ALL-TERRAIN VEHICLES. The operator of an
5 all-terrain vehicle on a roadway is subject to ss. 346.04, 346.06, 346.11, 346.14 (1),
6 346.18, 346.19, 346.20, 346.21, 346.215 (3), 346.26, 346.27, 346.33, 346.35, 346.37,
7 346.39, 346.40, 346.44, 346.46, 346.47, 346.48, 346.50 (1) (b), 346.51, 346.52, 346.53,
8 346.54, 346.55, 346.71, 346.87, 346.88, 346.89 (1) to (3), 346.90, 346.91, 346.92 (1)
9 and 346.94 (1) and (9) but is not subject to any other provision of this chapter.

10 **SECTION 6.** 346.89 (4) of the statutes is created to read:

11 346.89 **(4)** (a) In this subsection:

12 1. “Drive” means the exercise of physical control over a commercial motor
13 vehicle while the vehicle’s motor is running, except when the vehicle is stopped to the
14 side of or off a highway in a location where the vehicle can safely remain stationary.

15 2. “Electronic device” means a cellular telephone, personal digital assistant,
16 pager, computer, or any other device used to input, write, send, receive, or read text.

17 3. “Texting” means manually entering alphanumeric text into or reading text
18 from an electronic device, except that the term does not include any of the following:

19 a. Reading or selecting a telephone number, extension number, or voice mail
20 retrieval code or command on, or entering a telephone number, extension number,
21 or voice mail retrieval code or command into, an electronic device for the purpose of
22 initiating or receiving a phone call or retrieving a voice mail.

23 b. Reading or selecting information on or inputting information into a global
24 positioning system or navigation system device.

1 (b) No person may drive a commercial motor vehicle while texting, except when
2 necessary for communication with law enforcement officers or other emergency
3 services personnel.

4 **SECTION 7.** 346.95 (12) of the statutes is created to read:

5 346.95 (12) Any person violating s. 346.89 (4) (b) may be required to forfeit not
6 more than \$2,750.

7 (END)

D-Note

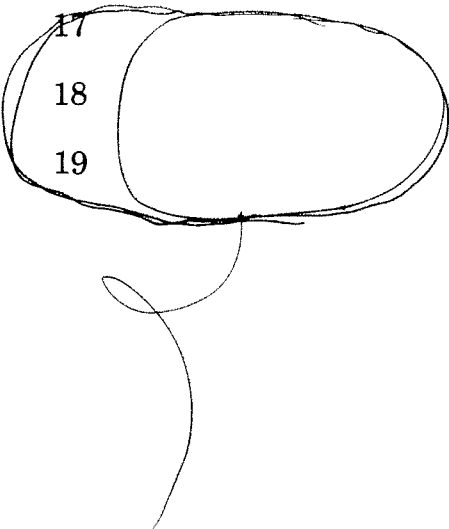
INSERT 2-1: ✓

SECTION 1. 343.065 (3) of the statutes is created to read:

343.065 (3) (a) If a person issued any commercial driver license under this chapter authorizing operation of commercial motor vehicles in interstate commerce does not have on file with the department a current certification specified in s. 343.14 (2) (i) ✓ 1. covering the person's physical qualifications, the department may downgrade the commercial driver license to a restricted commercial driver license under this section ✓ and impose a "K" restriction ✓ on the license.

(b) The department shall promulgate rules to define "downgrade" in accordance with federal law and regulations or guidance from the applicable federal agency, to establish the process for downgrading a commercial driver license and whether or not a new commercial driver license document will be issued after a commercial driver license is downgraded, and ^{to} establishing the process for reinstating a downgraded commercial driver license after the department receives from the licensee a valid medical certification or other appropriate certification of physical qualifications. ✓

17
18
19



**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0429/1dn
EVM&ARG:cjs:rs

December 1, 2010

ATTN: Tyler Byrnes

Please note, the exceptions referenced in section 10 of the federal register for farm custom operation, apiarian industries, and certain farm vehicle drivers are actually non-exceptions. These groups would have been excepted from the texting while driving regulation by existing general exceptions, but have been specifically non-excepted from this regulation. I have not, therefore, provided any treatment of these groups in this draft. Please let me know if you believe any changes are necessary.

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Mueller, Eric

From: Byrnes, Tyler - DOA [Tyler.Byrnes@wisconsin.gov]

Sent: Monday, December 27, 2010 10:42 AM

To: Mueller, Eric

Subject: LRB-0429/1 - Federal CDL Regulations

Eric,

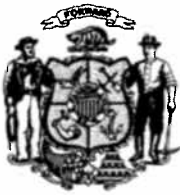
Could you remove all the language related to prohibiting the "Texting while driving" from this draft? We'd like it to focus only on the medical requirements section.

Let me know if you have questions.

Thanks,

Tyler

1/3/2011



State of Wisconsin
2011 - 2012 LEGISLATURE



12

LRB-042901

EVM&ARG:cjs:rs

Stays

RMR

Reopen header per
amended request sheet

DOA:.....Byrnes, BB0124 - Implement federal CDL regulations related to
medical certification ~~and texting while driving.~~

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

In 1/3/11

Do NOT Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

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DRIVERS AND MOTOR VEHICLES

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3 downgrade the commercial driver license to a restricted commercial driver license
4 under this section and impose a "K" restriction on the license.

5 (b) The department shall promulgate rules to define "downgrade" in
6 accordance with federal law and regulations or guidance from the applicable federal
7 agency, to establish the process for downgrading a commercial driver license and
8 whether or not a new commercial driver license document will be issued after a
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10 346.18, 346.19, 346.20, 346.21, 346.215 (3), 346.26, 346.27, 346.33, 346.35, 346.37,
11 346.39, 346.40, 346.44, 346.46, 346.47, 346.48, 346.50 (1) (b), 346.51, 346.52, 346.53,
12 346.54, 346.55, 346.71, 346.87, 346.88, 346.89 (1) to (3), 346.90, 346.91, 346.92 (1)
13 and 346.94 (1) and (9) but is not subject to any other provision of this chapter.

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20 pager, computer, or any other device used to input, write, send, receive, or read text.

21 3. "Texting" means manually entering alphanumeric text into or reading text
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24 retrieval code or command on, or entering a telephone number, extension number,

1 or voice mail retrieval code or command into, an electronic device for the purpose of
2 initiating or receiving a phone call or retrieving a voice mail.

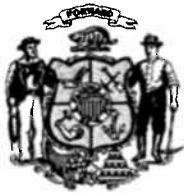
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5 (b) No person may drive a commercial motor vehicle while texting, except when
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7 services personnel.

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9 346.95 (12) Any person violating s. 346.89 (4) (b) may be required to forfeit not
10 more than \$2,750.

11 (END)



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0429/2
EVM&ARG:cjs:ph

DOA:.....Byrnes, BB0124 - Implement federal CDL regulations related to medical certification

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TRANSPORTATION

DRIVERS AND MOTOR VEHICLES

Under current law, DOT issues commercial driver licenses (CDLs) authorizing the licensee to operate certain commercial motor vehicles (CMVs). CMVs are motor vehicles that are designed or used to transport property or passengers and that weigh more than 26,000 pounds, transport 15 or more passengers plus the driver, or transport hazardous materials. An application to DOT for a CDL authorizing interstate operation of CMVs must include a certification by the applicant that he or she meets certain driver qualification requirements under federal law or federally-approved requirements established by DOT rule, including physical qualifications. If the application is for a CDL authorizing only intrastate operation of CMVs, the application to DOT must include a certification by the applicant that he or she meets driver qualification requirements for drivers in intrastate commerce established by DOT rule, including physical qualifications. If an applicant for a CDL does not meet the physical qualification requirements for CMV drivers operating in interstate commerce but is otherwise qualified to operate a CMV, DOT may issue to the applicant a CDL restricted to authorizing the operation of CMVs that are not in interstate commerce.

Under this bill, if a person issued a CDL authorizing operation of CMVs in interstate commerce does not have on file with DOT a current certification covering the person's physical qualifications to operate CMVs in interstate commerce, DOT may downgrade the CDL to a restricted CDL and impose a "K" restriction on the CDL restricting the licensee from operating CMVs in interstate commerce. DOT must promulgate rules to define "downgrade" in accordance with federal law and regulations or guidance from the applicable federal agency and to establish the process for downgrading a CDL and reinstating a CDL after it has been downgraded.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 343.065 (3) of the statutes is created to read:

343.065 (3) (a) If a person issued any commercial driver license under this chapter authorizing operation of commercial motor vehicles in interstate commerce does not have on file with the department a current certification specified in s. 343.14 (2) (i) 1. covering the person's physical qualifications, the department may downgrade the commercial driver license to a restricted commercial driver license under this section and impose a "K" restriction on the license.

(b) The department shall promulgate rules to define “downgrade” in accordance with federal law and regulations or guidance from the applicable federal agency, to establish the process for downgrading a commercial driver license and whether or not a new commercial driver license document will be issued after a commercial driver license is downgraded, and to establish the process for reinstating a downgraded commercial driver license after the department receives from the licensee a valid medical certification or other appropriate certification of physical qualifications.

(END)